

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Sections 309(j) and 337 of the)	
Communications Act of 1934 as Amended)	WT Docket No. 99-87
)	
Promotion of Spectrum Efficient Technologies)	RM-9332
on Certain Part 90 Frequencies)	

INITIAL COMMENTS
OF THE PRIVATE WIRELESS MINING COALITION

Respectfully submitted,

**THE PRIVATE WIRELESS MINING
COALITION**

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SUMMARY

The Private Wireless Mining Coalition (the “Coalition”) hereby submits its initial comments (“Comments”) to the Second Further Notice of Proposed Rulemaking (the “Second FNPRM”) released on February 25, 2003, in this proceeding.

For all of the reasons set forth herein, the Coalition respectfully submits that, with regard to the Second FNPRM, the Commission should adopt rules consistent with the following proposals for non-public safety entities operating on PLMRS frequencies in the 150-174 MHz and/or 421-512 MHz bands (the “Affected Bands”):

- For facilities located solely in Rural Areas (as defined herein), ***the Commission should not at this time impose a deadline for mandatory migration to 6.25 kHz technology.*** As the record in this proceeding demonstrates, congestion and spectrum scarcity concerns focus on urban areas. There is no significant congestion concerns in Rural Areas. Thus, there is as a general matter no justification to compel conversions to narrowband equipment in Rural Areas, where companies generally continue to use 25 kHz equipment without causing objectionable interference to other licensees, and without limiting new entrants access to this spectrum. Accordingly, for the Commission to seek to mandate a *second* migration in Rural Areas (from 12.5 kHz to 6.25 kHz technology), where a *first* migration (from 25 kHz to 12.5 kHz technology) may itself be unnecessary, is clearly unwarranted. Given that mandating the use of 12.5 kHz facilities is not necessary today in Rural Areas and should not be necessary for at least many more years, it is certainly premature at this time to mandate a date by which 6.25 kHz facilities must be used in Rural Areas.

- For facilities located solely in Rural Areas, if the Commission nevertheless elects to impose a deadline for mandatory migration to 6.25 kHz technology, such deadline ***should be no earlier than January 1, 2023, and the Commission should accept for filing New 12.5 kHz Applications and Expansion 12.5 kHz Applications (as such terms are defined herein, collectively “New/Expansion 12.5 kHz Applications”) until such January 1, 2023 deadline.*** First, the Commission determined in the Second Report and Order (“Second R&O”) that the ultimate conversion date to 12.5 kHz technology for equipment operating in the Affected Bands would be January 1, 2013. This conclusion was supported by an earlier Commission finding that “ten years was a reasonable transition cycle” given the lifespan of equipment. The Commission further stated in the Second R&O that it was seeking to “strike a balance between the budgetary exigencies surrounding equipment costs and [its] goal of promoting spectral efficiency in a fairly expeditious manner.” Given these Commission findings, if the Commission decides to impose a mandatory migration to 6.25 kHz technology for Rural Area systems, the ultimate conversion date should be no earlier than January 1, 2023. Otherwise, Rural Area licensees who do not convert to 12.5 kHz until on or about January 1, 2013 would have less than ten years to use their equipment before being forced to convert to 6.25 kHz technology. Such a result would be inconsistent with the Commission’s findings in the Second R&O. Second, if the Commission does impose a deadline for mandatory conversion to 6.25 kHz technology for licensees located in Rural Areas, the Commission should accept for filing New/Expansion 12.5 kHz Applications until the January 1, 2023 deadline proposed by the Coalition.

- In addition, in these Comments the Coalition demonstrates that for facilities located in whole or in part in an Urban Area (as such term is defined herein), the ultimate deadline for mandatory migration to 6.25 kHz technology should be ***no earlier than January 1, 2023***. Otherwise, companies who do not convert to 12.5 kHz until on or about January 1, 2013 would have less than ten years to use their equipment before being forced to convert to 6.25 kHz technology. Such a result would be inconsistent with the Commission's findings in the Second R&O, and therefore for Urban Area systems the ultimate conversion date should be no earlier than January 1, 2023.

- Further, for proposed facilities located in whole or in part in an Urban Area, where the applicant obtains the consent from all stations that could be subjected to objectionable interference from the proposed facilities, the Commission should accept for filing New/Expansion 12.5 kHz Applications for such facilities ***until the mandatory conversion date for Urban Areas, which the Coalition submits should be no earlier than January 1, 2023***. In the Coalition's Petition for Reconsideration ("Coalition Petition"), the Coalition demonstrated that because the Commission's narrowband migration requirements are aimed at ensuring the efficient use of shared spectrum and protecting the operations of co-channel and adjacent channel licensees that could be subject to objectionable interference, the Commission should accept New/Expansion 25 kHz Applications for filing until January 1, 2013, where - although overlap with an Urban Area exists - the applicant obtains the consent from all stations that could be subjected to objectionable interference from the proposed facilities. For the same reasons, and given that the Commission has found that ten years is a reasonable transition cycle in light of the lifespan of equipment, for proposed facilities located in whole or in part in an Urban Area, where the applicant obtains the consent from all stations that could be subjected to objectionable interference from the proposed facilities, the Commission should accept for filing New/Expansion 12.5 kHz Applications for such facilities until the mandatory conversion date for Urban Areas, which the Coalition submits should be no earlier than January 1, 2023.

- For proposed facilities located in whole or in part in an Urban Area, where the applicant does not obtain the consent from all stations that could be subjected to objectionable interference from the proposed facilities, the Commission should accept for filing New/Expansion 12.5 kHz Applications for such facilities ***until eleven years after the 6.25 kHz Readily Available Date (as that term is defined herein)***.

- Finally, in these Comments the Coalition demonstrates that ***the Commission should not impose a deadline*** by which it will prohibit the manufacture and importation of equipment capable of operating on 12.5 kHz bandwidth in the Affected Bands. If, however, the Commission nevertheless does impose a deadline by which it will prohibit the manufacture and importation of equipment capable of operating on 12.5 kHz bandwidth, such deadline ***should be no earlier than January 1, 2021***.

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INITIAL COMMENTS
OF THE PRIVATE WIRELESS MINING COALITION

INTRODUCTION

The Private Wireless Mining Coalition (the “Coalition”)¹ hereby submits the Coalition’s initial comments (“Comments”) to the Second Further Notice of Proposed Rulemaking released on February 25, 2003, in the above-captioned proceeding.² As discussed in the Coalition’s Petition for Reconsideration filed on August 18, 2003 in this proceeding (the “Coalition Petition”), the Coalition Members are affiliated with some of the largest mining companies in the world, each of which is licensed to operate private land mobile radio service (“PLMRS”) frequencies in the 150-174 MHz and/or 421-512 MHz bands (the “Affected Bands”). Collectively, the Coalition Members hold more than 250 Commission licenses in the Affected

¹ The Coalition is comprised of the following mining company members (“Members”): (i) Phelps Dodge Corporation and its various North American mining subsidiaries (collectively, “Phelps Dodge”); (ii) Barrick Goldstrike Mines Inc. (“Barrick”); and (iii) BHP Billiton, New Mexico Coal.

² “Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies”, Second Report and Order And Second Further Notice Of Proposed Rule Making, WT Docket No. 99-87, RM-9332, FCC 03-34 (rel. February 25, 2003) (the “Second FNPRM”, when referring to the Second Further Notice of Proposed Rulemaking, and the “Second R&O” when referring to the Second Report and Order).

Bands that authorize the operation of more than 6,000 radio units, including base stations, repeaters, mobiles and portables.

For all of the reasons set forth herein, the Coalition respectfully submits that, with regard to the Second FNPRM, the Commission should adopt rules consistent with the following proposals for non-public safety entities operating on PLMRS frequencies in the Affected Bands:

- For facilities located solely in Rural Areas, ***the Commission should not at this time impose a deadline for mandatory migration to 6.25 kHz technology.***³
- For facilities located solely in Rural Areas, if the Commission nevertheless elects to impose a deadline for mandatory migration to 6.25 kHz technology, such deadline ***should be no earlier than January 1, 2023, and the Commission should accept for filing New 12.5 kHz Applications⁴ and Expansion 12.5 kHz Applications⁵ until such January 1, 2023 deadline.***
- For facilities located in whole or in part in an Urban Area,⁶ the ultimate deadline for mandatory migration to 6.25 kHz technology should be ***no earlier than January 1, 2023.***

³ For the purposes of these Initial Comments, proposed facilities should be deemed to be located solely in a “Rural Area” only if both of the following are true: (i) the area of operation of the proposed facilities does not overlap a circle with a radius of 113 km (70 mil.) from the geographic coordinates specified for the urban areas listed in 47 C.F.R. §90.741 (“70 Mile Urban Area Contours”); and (ii) the service area contour of the proposed facilities also does not overlap any 70 Mile Urban Area Contours. Under this definition: (i) “*area of operation*” is the area of operation specified at Item 4 of an applicant’s Schedule D of FCC Form 601; and (ii) “*service area contour*” is the 37 dBu contour for VHF stations, and the 39 dBu contour for UHF stations. See, e.g., 47 C.F.R. §90.187(b)(2)(iii). See Coalition Petition, p.4 (where the Coalition applied the same definitions in connection with the migration from 25 kHz technology to 12.5 kHz technology).

⁴ For the purposes of this Petition, the term “New 12.5 kHz Application” will be defined as an application requesting Commission authority to operate a new station on the Affected Bands utilizing channels with a bandwidth exceeding 6 kHz. Equipment operating at one voice path per 12.5 kHz of spectrum will be referred to herein as “12.5 kHz Equipment”. Equipment operating at one voice path per 6.25 kHz of spectrum will be referred to herein as “6.25 kHz Equipment”.

⁵ For the purposes of this Petition, the term “Expansion 12.5 kHz Application” will be defined as an application requesting Commission authority to modify an existing station on the Affected Bands utilizing channels with a bandwidth exceeding 6 kHz so that - if approved - the subject station’s existing authorized interference contour would be increased. Collectively, New 12.5 kHz Applications and Expansion 12.5 kHz Applications will be referred to as “New/Expansion 12.5 kHz Applications”.

⁶ For the purposes of these Initial Comments, facilities are considered to be located in whole or in part in an Urban Area if they are not located solely in a Rural Area.

- For proposed facilities located in whole or in part in an Urban Area, where the applicant obtains the consent from all stations that could be subjected to objectionable interference from the proposed facilities, the Commission should accept for filing New/Expansion 12.5 kHz Applications for such facilities ***until the mandatory conversion date for Urban Areas, which the Coalition submits should be no earlier than January 1, 2023.***
- For proposed facilities located in whole or in part in an Urban Area, where the applicant does not obtain the consent from all stations that could be subjected to objectionable interference from the proposed facilities, the Commission should accept for filing New/Expansion 12.5 kHz Applications for such facilities ***until eleven years after the 6.25 kHz Readily Available Date.***⁷
- ***The Commission should not impose a deadline*** by which it will prohibit the manufacture and importation of equipment capable of operating on 12.5 kHz bandwidth in the Affected Bands.
- If, however, the Commission nevertheless does impose a deadline by which it will prohibit the manufacture and importation of equipment capable of operating on 12.5 kHz bandwidth, such deadline ***should be no earlier than January 1, 2021.***

DISCUSSION

In the Coalition Petition, a copy of which is attached hereto as Exhibit 1 and which is incorporated herein by reference in its entirety, the Coalition demonstrated that – in the context of the narrowband migration from 25 kHz to 12 kHz technology -- the Commission should not impose identical rules with regard to Rural Area facilities and Urban Area facilities.

Specifically, the Coalition demonstrated therein that, among other things, (i) there exists a substantial disparity in congestion in urban areas and rural areas (i.e. congestion is far more problematic in urban areas than in rural areas); (ii) Rural Area licensees are far more likely than Urban Area licensees to lack reliable, if any, cellular or PCS coverage in the event of a system disruption caused by system conversions. As the Coalition further demonstrated, in the recent *Spectrum Policy Task Force Report*, the Commission warned against adopting uniform regulations for licensees in urban and rural areas, given that concerns regarding spectrum

⁷ The 6.25 kHz Readily Available Date shall mean the 6.25 kHz Certification Date or the date that 6.25 kHz Equipment is commercially and readily available if such is not the case on the 6.25 kHz Certification Date. The 6.25 kHz Certification Date is currently January 1, 2005. See

congestion are typically limited to urban areas. In fact, the Commission expressly cautioned against “constrain[ing] the use of uncongested spectrum.”⁸ Accordingly, for the same reasons articulated in the Coalition Petition (which are incorporated by reference herein), the Commission should not impose all of the same rules on Rural Area facilities and Urban Area facilities with respect to the matters at issue in the Second FNPRM.

The Coalition Petition also demonstrated that the bases upon which the Commission rejected a migration scheme based on a rural/urban distinction, in the context of the migration from 25 kHz to 12.5 kHz technology, were factually erroneous and that a narrowband migration based on an objectively definable rural/urban distinction is in the public interest.⁹ In these Initial Comments, the Coalition’s proposal for treatment of rural and urban licensees in the context of a migration from 12.5 kHz to 6.25 kHz technology similarly addresses the concerns raised by the Commission and other entities earlier in this proceeding with respect to an approach taking into account the distinctions between rural and urban areas, as described below:

- The Coalition’s proposal in these Initial Comments presents no difficulty in defining a market’s location or with respect to frequency coordination because the proposal contains a bright line test for a rural/urban distinction. Specifically, a proposed 12.5 kHz facility would be considered to be in a “Rural Area” if the area of operation of the proposed facilities and the service area contour of the proposed facilities do not overlap any 70 Mile Urban Area Contours.
- The Coalition’s proposal also demonstrates that a migration that takes into account the distinctions between rural and urban areas can satisfactorily address situations where radio systems are integrated across all geographic areas, or where certain licensees may operate communications systems in various markets that cross more than one geographic area. In this regard, the Coalition’s proposal makes it clear that if proposed facilities are partly in an Urban Area, they will be treated as being in an Urban Area under the proposal. **Moreover, the Coalition’s proposal also recognizes the critical fact that proposed facilities of applicants that are located solely in a Rural Area (which do not have significant**

Coalition Petition at 22.

⁸ See Coalition Petition at 4-7; “Spectrum Policy Task Force Report”, ET Docket No. 02-135, p. 59 (November 1, 2002)

⁹ See Coalition Petition at 6-7.

congestion concerns) should not be treated like they are in Urban Areas simply because some other companies have systems that cross geographic areas.

- Finally, the Coalition's proposal also demonstrates that a narrowband migration based on distinctions between rural and urban areas would not delay nor impede the most efficient use of spectrum because the proposal will treat proposed facilities that are even partially in Urban Areas as being in Urban Areas. Moreover, the Coalition's proposal will ensure that the recommendations of the Commission's Spectrum Policy Task Force Report, to forbear from constraining the use of uncongested spectrum, will not go unheeded.

I. Facilities Located Solely In Rural Areas

For facilities located solely in Rural Areas, the Commission should not impose a deadline for mandatory migration to 6.25 kHz technology. If, however, the Commission nevertheless does impose a deadline for facilities located solely in Rural Areas, such deadline should be no earlier than January 1, 2023, and the Commission should accept for filing New/Expansion 12.5 kHz Applications until such January 1, 2023 deadline.

A. For Facilities Located Solely in Rural Areas, the Commission Should Not Impose A Deadline for Mandatory Migration to 6.25 Technology

As the record in this proceeding demonstrates, congestion and spectrum scarcity concerns focus on urban areas. There is no significant congestion concerns in Rural Areas. Thus, there is as a general matter no justification to compel conversions to narrowband equipment in Rural Areas, where companies generally continue to use 25 kHz equipment without causing objectionable interference to other licensees, and without limiting new entrants access to this spectrum.¹⁰

¹⁰ Although the Coalition does believe that as a general matter there is no justification to compel conversions to narrowband equipment in Rural Areas, as the Commission is aware the Coalition has not opposed a mandatory migration to 12.5 kHz technology by January 1 2013 in Rural Areas so long as the Commission will accept new and expansion applications on 25 kHz until January 1, 2013 for proposed facilities located solely in Rural Areas. See Coalition Petition at 3-19.

Accordingly, for the Commission to seek to mandate a *second* migration in Rural Areas (from 12.5 kHz to 6.25 kHz technology), where a *first* migration (from 25 kHz to 12.5 kHz technology) may itself be unnecessary, is clearly unwarranted. Given that mandating the use of 12.5 kHz facilities is not necessary today in Rural Areas and should not be necessary for at least many more years, it is certainly premature at this time to mandate a date by which 6.25 kHz facilities must be used in Rural Areas. The Commission, of course, can always initiate a proceeding at a later date to revisit this issue in Rural Areas if warranted.

B. If The Commission Elects To Impose A Deadline For Mandatory Migration To 6.25 kHz Technology For Facilities Located Solely In Rural Areas, Such Deadline Should Be No Earlier Than January 1, 2023, And the Commission Should Accept for Filing New/Expansion 12.5 kHz Applications Until Such January 1, 2023 Deadline

As demonstrated above, there is no justification for the Commission to impose a deadline for mandatory migration to 6.25 technology for facilities located solely in Rural Areas at this time. If the Commission nevertheless imposes such a deadline, the deadline should be no earlier than January 1, 2023, and in such case the Commission should accept for filing New/Expansion 12.5 kHz Applications until such January 1, 2023 deadline.

First, the Commission determined in the Second R&O that the ultimate conversion date to 12.5 kHz technology for equipment operating in the Affected Bands would be January 1, 2013.¹¹ This conclusion was supported by an earlier Commission finding that “ten years was a reasonable transition cycle” given the lifespan of equipment.¹² The Commission further stated in the Second R&O that it was seeking to “strike a balance between the budgetary exigencies surrounding equipment costs and [its] goal of promoting spectral efficiency in a fairly expeditious manner.” Given these Commission findings, if the Commission decides to impose a

¹¹ Second R&O, ¶18.

¹² See “Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Report and Order and Further Notice of Proposed

mandatory migration to 6.25 kHz technology for Rural Area systems, the ultimate conversion date should be no earlier than January 1, 2023. Otherwise, Rural Area licensees who do not convert to 12.5 kHz until on or about January 1, 2013 would have less than ten years to use their equipment before being forced to convert to 6.25 kHz technology. Such a result would be inconsistent with the Commission's findings in the Second R&O.

Second, if the Commission does impose a deadline for mandatory conversion to 6.25 kHz technology for licensees located in Rural Areas, the Commission should accept for filing New/Expansion 12.5 kHz Applications until the January 1, 2023 deadline proposed by the Coalition. In the context of the migration from 25 kHz to 12.5 kHz technology, the Coalition has demonstrated it is contrary to the public interest for the Commission to prohibit Rural Area licensees from filing New/Expansion 25 kHz Applications (as such term is defined in the Coalition Petition at p.2, n.4) prior to the January 1, 2013, mandatory migration date.¹³

Therefore, in light of the fact that (i) the Commission has concluded that companies with Rural Area systems should have the use of their equipment for at least ten years; and (ii) the Coalition has demonstrated that New/Expansion 25 kHz Applications in Rural Areas should be permitted until January 1, 2013, if the Commission does impose a deadline for mandatory migration to 6.25 kHz technology in Rural Areas, the Commission should not prohibit Rural Area licensees from filing New/Expansion 12.5 kHz Applications prior to January 1, 2023.

Rulemaking, PR Docket No. 92-235, 10 FCC Rcd 10098, ¶35 (1995).

¹³ See Coalition Petition at 3-19. In brief, the Coalition demonstrated that (i) for Rural Area systems, there are no compelling public interest benefits supporting the prohibition of such applications prior to the January 1, 2013 mandatory migration date, Id. at 4-7; (ii) for Rural Area systems, prohibiting the filing of such applications prior to the January 1, 2013 mandatory migration date will create safety and environmental risks and unnecessarily and substantially disrupt company operations, Id. at 7-18; and (iii) prohibiting the filing of such applications prior to the January 1, 2013 mandatory migration date will unnecessarily cause Rural Area licensees such as the Coalition Members tremendous economic harm. Id. at 19-21.

II. Facilities Located In Whole Or In Part In Urban Areas

A. For Facilities Located In Whole or In Part in Urban Areas, The Ultimate Deadline For Mandatory Migration To 6.25 kHz Technology Should Be No Earlier Than January 1, 2023

In the Second R& O, the Commission determined that the ultimate conversion date to 12.5 kHz technology for equipment operating in the Affected Bands would be January 1, 2013. As discussed previously herein, this conclusion was based on an earlier finding that “ten years was a reasonable transition cycle” given the lifespan of equipment. See n.12 *supra*. Accordingly, the ultimate conversion date for a mandatory migration to 6.25 kHz technology for Urban Area systems should be no earlier than January 1, 2023. Otherwise, companies who do not convert to 12.5 kHz until on or about January 1, 2013 would have less than ten years to use their equipment before being forced to convert to 6.25 kHz technology. Such a result would be inconsistent with the Commission’s findings in the Second R&O, and therefore for Urban Area systems the ultimate conversion date should be no earlier than January 1, 2023.

B. For Proposed Facilities Located In Whole Or In Part In An Urban Area, Where The Applicant Obtains The Consent From All Stations That Could Be Subjected To Objectionable Interference From The Proposed Facilities, The Commission Should Accept For Filing New/Expansion 12.5 kHz Applications For Such Facilities Until The Mandatory Conversion Date For Urban Areas, Which The Coalition Submits Should Be No Earlier Than January 1, 2023

In the Coalition Petition, the Coalition demonstrated that because the Commission’s narrowband migration requirements are aimed at ensuring the efficient use of shared spectrum and protecting the operations of co-channel and adjacent channel licensees that could be subject to objectionable interference, the Commission should accept New/Expansion 25 kHz Applications for filing until January 1, 2013, where - although overlap with an Urban Area

exists - the applicant obtains the consent from all stations that could be subjected to objectionable interference from the proposed facilities.¹⁴

For the same reasons, and given that the Commission has found that ten years is a reasonable transition cycle in light of the lifespan of equipment, for proposed facilities located in whole or in part in an Urban Area, where the applicant obtains the consent from all stations that could be subjected to objectionable interference from the proposed facilities, the Commission should accept for filing New/Expansion 12.5 kHz Applications for such facilities until the mandatory conversion date for Urban Areas, which the Coalition submits should be no earlier than January 1, 2023.¹⁵

C. For Proposed Facilities Located In Whole Or In Part In An Urban Area, Where The Applicant Does Not Obtain The Consent From All Stations That Could Be Subjected To Objectionable Interference From The Proposed Facilities, The Commission Should Accept For Filing New/Expansion 12.5 kHz Applications For Such Facilities Until Eleven Years After The 6.25 kHz Readily Available

In the Coalition Petition, the Coalition demonstrated that for proposed facilities located in whole or in part in an Urban Area, where the applicant does not obtain the consent from all stations that could be subjected to objectionable interference from the proposed

¹⁴ See Coalition Petition at 21.

¹⁵ Under the Coalition's proposal set forth in these Initial Comments, the following definitions will apply: "*Objectionable Interference*" would be considered to exist when the interference contour (19 dBu for VHF stations, 21 dBu for UHF stations) of the proposed 12.5 kHz station intersects the service contour (37 dBu for VHF stations, 39 dBu for UHF stations) of an existing station ("Existing Station") (See e.g., 47 C.F.R. §90.187(b)(2)(iii)); "*Existing Station*" is defined as an existing co-channel station and an existing station that has an operating frequency 7.5 kHz or less from the proposed 12.5 kHz station (See e.g., 47 C.F.R. §90.187(b)(2)(iii)(B)); "*Consent*" means written consent that specifically states all terms agreed to by the parties and is signed by the licensee of the Existing Station. The written consent must be maintained by the licensee proposing the New/Expansion Application and be made available to the Commission upon request. The submission of a coordinated application to the Commission under this rule must include a certification from the applicant that written consent has been obtained from all stations that would be subjected to objectionable interference from the proposed facilities, that the written consent documents encompass the complete understandings and agreements of the parties as to such consent; and that the terms and conditions thereof are consistent with the Commission's

facilities, the Commission should accept for filing New/Expansion 25 kHz Applications for such facilities until one year after the 6.25 kHz Readily Available Date.¹⁶ Accordingly, given that the Commission has found that ten years is a reasonable transition cycle in light of the lifespan of equipment, for proposed facilities located in whole or in part in an Urban Area, where the applicant does not obtain the consent from all stations that could be subjected to objectionable interference from the proposed facilities, the Commission should accept for filing New/Expansion 12.5 kHz Applications for such facilities until eleven years after the 6.25 kHz Readily Available.

III. Manufacture And Importation Of 12.5 kHz-Capable Equipment In The Affected Bands

If the Commission were to impose at this time a cut-off date for the manufacture and importation of 12.5 kHz capable equipment in the Affected Bands, it would, in effect, be imposing a date by which Rural Area systems must migrate to 6.25 kHz technology because those systems would be substantially constrained from obtaining 12.5 kHz-capable equipment after such cut-off date. But for the reasons set forth in Section 1(A) above, the Commission should not at this time impose a mandatory date by which Rural Area systems must migrate to 6.25 kHz technology. Therefore, the Commission should not at this time impose a cut-off date for the manufacture and importation of 12.5 kHz-capable equipment in the Affected Bands.

If the Commission nevertheless at this time decides to impose a date by which Rural Area systems must migrate to 6.25 kHz technology, as discussed in Section 1(B) above the Coalition has demonstrated that such date should be no earlier than January 1, 2023. In that event, if the Commission imposes a cut-off date for the manufacture and importation of 12.5 kHz-capable equipment, that date should be no earlier than January 1, 2021. If the cut-off date is any earlier,

rules (See e.g., 47 C.F.R. §90.187(b)(2)(v)).

¹⁶ See Coalition Petition at 22.

Rural Area licenses would not be sufficiently able to continue to acquire 12.5 kHz equipment during the period within which they would be permitted to continue to operate such equipment under the Coalition's proposal.¹⁷

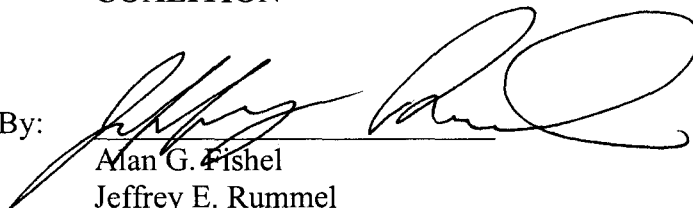
CONCLUSION

For the foregoing reasons, the Coalition Members respectfully request that the Commission render a decision in connection with the Second FNPRM in a manner consistent with these Initial Comments.

Respectfully submitted,

THE PRIVATE WIRELESS MINING COALITION

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Dated: September 15, 2003

¹⁷ If the Commission elects to impose at this time a mandatory conversion date in Rural Areas for 6.25 kHz technology that is after January 1, 2023, the cut-off date for the manufacture and importation of 12.5 kHz-capable equipment should be no earlier than two years prior to that mandatory conversion date.